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8 UNITED STATES DISTRICT COURT FOR THE  
9 CENTRAL DISTRICT OF CALIFORNIA-EASTERN DIVISION

10 RONALD GENGLER and CYNTHIA

11 GENGLER,

12 Plaintiffs,

13 vs.

14 NATIONSTAR MORTGAGE, LLC

15 And, AURORA BANK, FSB,

16 Defendants.

Case No. 1 EDCV12-01936 TJH (SPx)

COMPLAINT

JURY TRIAL DEMANDED

17 COMPLAINT

18 NOW COME Plaintiffs Ronald and Cynthia Gengler and bring this  
19 Complaint, seeking relief based upon, among other things, the  
20 Defendants' lack of standing to foreclose and upon Defendants'  
21 violations of various provisions of California and federal law.

22 BACKGROUND

23 1. Federal subject-matter jurisdiction exists here under  
24 both 28 U.S.C. § 1332(a), because the Plaintiffs are California  
25 residents, and both defendants are organized under states' laws  
26 other than California, and the amount at issue exceeds \$75,000,  
27 exclusive of interest and costs. This court also possesses  
28

1 subject-matter jurisdiction under 28 U.S.C. § 1331 because the  
2 allegations raise a question of law under the Truth-In-Lending Act  
3 ("TILA").

4       2. Defendants Ronald and Cynthia Gengler live in the house,  
5 which is their primary residence, that is the subject of non-  
6 judicial foreclosure proceeding that Defendants Nationstar  
7 Mortgage, LLC ("Nationstar") and Aurora Bank, FSB wrongfully  
8 instituted and wrongfully continue to pursue. Nor, at this  
9 juncture, is it clear who actually owns the Genglers' mortgage.  
10 That is so because, first, the Deed of Trust Assignment was  
11 executed by a known "robo-signer," and the alleged current owner,  
12 Aurora Bank, FSB's status is unclear—that is, Business Wire  
13 reported on June 29, 2012, that Defendant Nationstar had acquired  
14 Aurora Bank's assets (Exhibit A). But according to that press  
15 release, what Nationstar acquired was the servicing right from  
16 Aurora's wholly-owned subsidiary, Aurora Loan Services, LLC.  
17

18       3. The Genglers' primary residence is located in Riverside  
19 County, California and is located at 83673 Himilaya Drive, Indio,  
20 California ("Indio Property").

21       4. The Indio Property's legal description is: Lot 119 In  
22 Tract 32304, In the City of Indio, County of Riverside, State of  
23 California, As Per Map Recorded in Book 407, Page 31 Through 45  
24 Inclusive, Official Records of Said County.  
25  
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1       5. On or about October 27, 2006, the Genglers borrowed  
2 \$365,068 to purchase the Property. In conjunction with this loan,  
3 the Genglers executed a Deed of Trust to the original lender, First  
4 Mangus Financial ("First Mangus").

5  
6       6. Then, on or about August 16, 2011, the Mortgage  
7 Electronic Registration Systems, Inc. ("MERS"), purporting to act  
8 as "nominee" for First Mangus, executed a Corporate Assignment of  
9 Deed of Trust ("Assignment") in favor of Aurora Bank, FSB, and that  
10 is where the problems and law-breaking began.

11  
12       7. That is so because, among other reasons, Ms. Regina  
13 Lashley purportedly executed the assignment for MERS to Aurora, and  
14 one Irene Guerrero purportedly notarized the Assignment. See  
15 Exhibit B (Assignment).

16       8. But both Ms. Lashley and Ms. Guerrero have been  
17 identified as "robo signers."

18  
19       9. According to the Assignment's notarization, Ms. Guerrero  
20 is a Nebraska notary. MERS, however, is a Delaware Corporation,  
21 with its principal place of business in Michigan. Yet Defendants  
22 would have the Plaintiffs, and presumably, the Court believe that  
23 Lashley, a MERS Vice-President in Michigan, personally appeared  
24 before Guerrero, a notary in Scottsbluff, Nebraska, to execute the  
25 Assignment. That seems highly unlikely.  
26  
27  
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1        10. Upon information and belief, Plaintiffs allege that, in  
2 fact, Lashely did not personally appear before Guerrero on August  
3 16, 2011, as the Assignment says.

4        11. Rather, upon information and belief, Plaintiffs allege  
5 that the Assignment is a fraud for one or more of the following  
6 reasons: (a) Lashley did not appear before Guerrero when Lashley  
7 purportedly executed the Assignment, and thus, Guerrero's  
8 notarization was intentionally false when made; (b) Guerrero forged  
9 Lashley's signature; (c) Lashley forged Guerrero's signature; or  
10 (d) some unknown persons did some combination of the above.  
11  
12

13        12. In any event, the precise facts about what happened and  
14 about whether Lashley and Guerrero were in fact in the same place  
15 on August 16, 2011, are matters that lie particularly within the  
16 knowledge of Lashley; Guerrero; MERS; and Aurora. Consequently,  
17 the particularity pleading requirements for fraud are relaxed.  
18

19        13. Plaintiffs will amend to add more specificity upon  
20 completing discovery against these non-parties.

21        14. The problem with Guerrero's notarization is that, if  
22 fraudulent as Plaintiffs suspect, the Assignment is invalid. An  
23 invalid assignment means that the putative Trustee lacked legal  
24 standing to commence foreclosure proceedings. It also means that  
25 the current alleged owner of the mortgage did not take pursuant to  
26 a valid assignment, if any assignment at all was done.  
27  
28

1       15.       Further, the scope of Lashley's agency stands unclear, as  
2 does the scope of MERS's authority as a "nominee."

3       16.       Moreover, actual ownership of the mortgage or Deed of  
4 Trust stands in serious question. That is so for two reasons

5       17.       The purported Assignment from First Mangus to Aurora Bank  
6 was recorded on September 16, 2011. Then on October 3, 2011,  
7 putative trustee, Quality Loan Service Corporation, sent a Debt  
8 Validation Notice "DVN") to Plaintiffs. According to the DVN,  
9 "[t]he debt/loan is currently owed to: Aurora Bank, FSB." But,  
10 Business Wire reported on June 29, 2012 that Nationstar had  
11 acquired from Aurora, a subsidiary of now-defunct Lehman Brothers,  
12 Aurora's assets, (Exhibit A), or more precisely, servicing rights.  
13 This makes sense because Plaintiffs' pre-suite investigation  
14 indicates that Aurora Loan Servics, LLC acted as the master  
15 servicers for Lehman XS Trust, Series 2006-18N, which appears to be  
16 the putative owner of the mortgage. But that too stands in  
17 question.  
18  
19  
20

21       18.       On October 5, 2011, the putative trustee, non-party  
22 Quality Loan Service Corporation recorded in Riverside County's  
23 public records a purported Notice of Default ("NOD").

24       19.       On or about June 12, 2012, however, the Genglers received  
25 a letter from Aurora Bank, saying that the right to collect  
26 payments was transferred to Defendant Nationstar.  
27  
28

1       20. But, contrary to 15 U.S.C. § 1641(g), the Genglers did  
2 not receive a letter within 30 days of the purported assignment  
3 from First Mangus to Aurora, which violated the Truth-in-Lending  
4 Act.

5  
6       21. Further, a check of Freddie Mac's database indicates that  
7 Freddie Mac owns the Genglers' mortgage. Yet nothing so indicates  
8 in Riverside County's public records. So, between Freddie Mac's  
9 records and Nationstar's acquiring Aurora's assets, ownership of  
10 the Genglers' mortgage stands in serious question.

11  
12       22. Further, Plaintiffs' pre-suit investigation reveals the  
13 Genglers' mortgage became part of a mortgage-backed security,  
14 packaged-up as Lehman XS Trust, Series 2006-18N. The following  
15 appears to be what happened: The Genglers' obtained a mortgage  
16 from First Mangus on October 27, 2006. At some point thereafter,  
17 and Plaintiffs do not know when because no recorded assignment  
18 exists to show when, the Genglers' mortgage was transferred or  
19 assigned to Freddie Mac and/or to Lehman XS Trust, Series 2006-18N.  
20 Again, no recorded assignment exists to show when such assignment  
21 or transfer occurred.

22  
23       23. Further, according to Lehman XS Trust documents, the  
24 Trust exists under New York law and closed on November 30, 2006 and  
25 the cut-off date for taking in new assets was November 1, 2006,  
26 just five days after the Genglers made their mortgage to First  
27 Mangus. This is important because, under New York law, a trust  
28

1 cannot take assignment of assets after the cut-off or closure date.  
2 That means any assignment to the Trust, which has not been  
3 recorded, likely would be invalid.

4 24. For these reasons, the putative assignments were invalid,  
5 and Defendant Nationstar had neither the legal right to foreclose  
6 on nor to sell the Genglers' property.

7 25. Also, for these reasons, ownership of the Genglers'  
8 mortgage stands in question, as does the propriety of the  
9 foreclosure and Trustee sale that occurred on August 30, 2012.  
10

11 **COUNT I:**

12 **WRONGFUL FORECLOSURE**

13 26. Plaintiffs here reincorporate by reference the  
14 allegations made in paragraphs one through twenty-five, as if fully  
15 re-alleged here.  
16

17 27. The Defendants wrongfully foreclosed for the following  
18 reasons:  
19

20 a. Defendants lacked the legal standing to foreclose  
21 because the purported assignment was not duly executed;  
22 consequently, the Assignment from First Mangus to Aurora  
23 might be invalid, and thus, Aurora could not assign any  
24 rights to Nationstar; and

25 b. Defendants lacked legal standing to foreclose as it  
26 appears that neither Aurora nor Nationstar validly owns  
27 the Genglers' mortgage, assuming the truth of the  
28

1           allegations regarding an assignment or transfer to either  
2           the Lehman trust or to Freddie Mac.

3           **COUNT II: UNFAIR BUSINESS PRACTICES UNDER BUSINESS AND PROFFESIONS**

4                           **CODE SECTION §17200**

5  
6           28.       Plaintiffs here incorporate by reference the allegations  
7 made in paragraphs one through twenty-five, as if fully re-alleged  
8 here.

9           29.       Defendants' actions clearly demonstrate unfair business  
10 practices. As used in section §17200, unfair competition means and  
11 includes any unlawful, unfair or fraudulent business act or  
12 practice and unfair, deceptive, untrue or misleading advertising.  
13 Cal. Bus. & Prof. Code § 17200.  
14

15          30.       Here, the Deed of Trust assignment appears to have been  
16 executed by known "robo-signers."

17          31.       Plaintiffs believe that this is a policy, pattern, and  
18 practice of Defendants given the number of assignments that were  
19 likely executed by the "robo-signers."  
20

21          32.       Upon information and belief, Nationstar and Aurora  
22 demanded payment with no legal right to do so. The debt, if owed  
23 at all, is owed to some certificate holder for the securitization  
24 process.  
25

26          33.       Nationstar foreclosed with no legal right to do so.

27          34.       Both Defendants have tried to cover-up and conceal the  
28 fact that, apparently, neither actually owned, owns, or could own



1 the Genglers' mortgage, in the light of the securitization  
2 discovered by Plaintiffs.

3 35. Defendants have invoked California's foreclosure statutes  
4 in what appears to be an act of civil theft.  
5

6 **COUNT III: VIOLATION OF TRUTH-IN-LENDING ACT**  
7 **15 U.S.C. § 1641(g) - FAILURE TO PROVIDE TIME NOTICE OF NEW**  
8 **CREDITOR**

9 36. Plaintiffs here incorporate by reference the allegations  
10 made in paragraphs one through twenty-five, as if fully here re-  
11 alleged.

12 37. Section 1641(g) of the Truth-In-Lending Act ("TILA")  
13 required that Aurora Bank inform the Genglers that a purported  
14 assignment was made. TILA required that Aurora Bank do so within  
15 30 days of the assignment's being executed.

16 38. But Aurora Bank did not.

17 39. Aurora Bank's violating TILA has caused the Genglers  
18 monetary damages.

19 40. Aurora Bank's violating TILA subjects Aurora to statutory  
20 damages and attorney's fees under TILA.

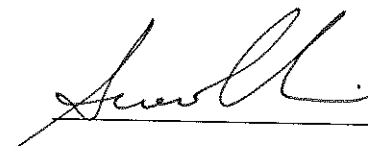
21 **COUNT IV-DECLATORY JUDGMENT**

22 41. Plaintiffs here re-allege and incorporate by reference  
23 allegations in paragraphs one through twenty-seven.

24 42. Plaintiffs seek a declaration of the rights and  
25 obligations of the parties, and specifically, whether either  
26 Defendant ever legally acquired the Deed of Trust.  
27  
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1 WHEREFORE: Plaintiffs demand a trial by jury on all issues so  
2 triable. Plaintiffs also demand compensatory and punitive damages.  
3 Plaintiffs demand that Defendants disgorge the monies Defendants  
4 have unlawfully collected from Plaintiffs. Plaintiffs further  
5 demand statutory damages and attorney's fees under TILA, and  
6 Plaintiffs seek a declaration that the Trustee sale of Plaintiffs'  
7 home was unlawful because, as alleged here, the defendants did not  
8 own the mortgage or possess a validly assigned Deed of Trust.

9 DATED: December 5, 2012



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